

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA RACING COMMISSION

In the Matter of the Proposed Revocation of the
Class C License Issued to Chris E. Zimmerman

and

In the Matter of the Proposed Revocation of the
Class C License Issued to Joseph T. Jaspersen

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

The above-entitled matters came on for hearing before Administrative Law Judge Barbara L. Neilson commencing at 9:30 a.m. on December 18, 2006, at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota 55401. Joan Eichhorst, Assistant Attorney General, 445 Minnesota Street, Suite 1800, St. Paul, Minnesota 55101, appeared on behalf of the Minnesota Racing Commission. There was no appearance by or on behalf of either of the Respondents, Chris E. Zimmerman, 908 Aspen Drive, Burnsville, MN 55337 and 14262 Allen Boulevard, Savage, MN 55378, or Joseph T. Jaspersen, 4334 Halifax Avenue North, Robbinsdale, MN 55422 and 14262 Allen Boulevard, Savage, MN 55378. The OAH record closed at the end of the hearing on December 18, 2006.

STATEMENT OF THE ISSUE

The issue in this case is whether or not disciplinary action should be taken against the Class C license issued to the Respondents, Chris E. Zimmerman and Joseph T. Jaspersen, under Minn. Stat. § 240.08, based upon allegations that they have been charged with felony controlled substance crimes.

Based upon the record in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Until recently, Respondents Chris E. Zimmerman and Joseph Jaspersen worked as Card Club employees at Canterbury Park. Everyone who works at

Canterbury Park must be licensed, including card dealers.¹ The Respondents hold Class C Licenses from the Minnesota Racing Commission.²

2. As part of the application for a Class C license or the annual renewal of such a license, individuals must attest that they have never been convicted of a felony in a state or federal court and “do not have a state or federal felony charge pending.”³

3. On November 1, 2006, the Order for Hearing and Notice Thereof in each of these matters was mailed to Respondent Chris E. Zimmerman at 908 Aspen Drive, Burnsville, MN 55337, and 14262 Allen Boulevard, Savage, MN 55378, and to Respondent Joseph T. Jaspersen at 4334 Halifax Avenue North, Robbinsdale, MN 55422, and 14262 Allen Boulevard, Savage, MN 55378.⁴ These are the Respondents' last known addresses on file with the Agency. Although the notice sent to Mr. Zimmerman at 14262 Allen Boulevard, Savage, MN 55378, was returned by the Postal Service with a notation that the property was “vacant - unable to forward,” the notice sent to the Aspen Drive address was not returned.

4. Mr. Jaspersen owned the home located at 14262 Allen Boulevard in Savage, Minnesota, and Mr. Zimmerman was a renter there. A homeowner's insurance policy for the residence was maintained in the names of both Respondents.⁵

5. After receiving information that a substantial marijuana growing operation was being conducted at 14262 Allen Boulevard in Savage, Minnesota, and that Chris Zimmerman was coordinating this operation with other individuals, law enforcement officials obtained a search warrant for the premises. The search warrant was executed on September 19, 2006. The officers discovered approximately 380 marijuana plants in various stages of growth located in five different areas of the house and several types of materials in the basement consistent with a growing operation. They estimated that 380 plants grown to maturity, harvested, and dried would produce approximately 95 pounds (40 kilograms) of marijuana. Robin Newkirk, another renter at the home, informed officers that the marijuana growing operation belonged to Mr. Zimmerman and Mr. Jaspersen, and indicated that Mr. Zimmerman and Mr. Jaspersen would harvest the plants together every six to eight weeks.⁶

6. On approximately September 21, 2006, the Respondents were charged with felony controlled substance crimes (specifically, conspiracy to sell or manufacture 25 kilograms or more of marijuana in violation of Minn. Stat. §§ 152.022, subd. 1(4) and 152.096, and aiding and abetting the sale or manufacture of mixtures containing

¹ Testimony of Richard Krueger.

² Exhibits 1-Z, 2-J.

³ Exs. 1-Z, 2-J; Testimony of R. Krueger.

⁴ See Affidavits of Service by U.S. Mail of Angela Kenney attached to each Order for Hearing and Notice Thereof.

⁵ Exs. 2-Z, 3-J.

⁶ Exs. 3-J, 2-Z.

marijuana in violation of Minn. Stat. §§ 152.025, subd. 1(1) and 609.05).⁷ These criminal matters are still pending against both Respondents.

7. Both Respondents were fired by Canterbury Park shortly after it learned of the criminal complaints.⁸

8. The Order for Hearing and Notice Thereof in each matter contained the following notice: "All parties are advised that should a party fail to appear at the hearing as set forth above, the allegations made or issues set out in this order may be taken as true."⁹

9. The Order for Hearing and Notice Thereof issued in each matter scheduled a hearing for December 18, 2006, at 9:30 a.m.¹⁰

10. Counsel for the Minnesota Racing Commission received a letter dated November 10, 2006, from Craig E. Cascarano, Attorney at Law, Cascarano Law Office, Suite 3260, 150 South Fifth Street, Minneapolis, MN 55402, in which he indicated that Mr. Jaspersen waived his presence for the contested hearing set for December 18, 2006.¹¹

11. Although Mr. Zimmerman did not contact counsel for the Minnesota Racing Commission prior to the hearing, he did acknowledge during an unemployment compensation hearing held during the week of December 11, 2006, that he was aware of the December 18 hearing.

12. Because these two matters involve substantially the same issues of fact and law, they were consolidated for hearing by the Administrative Law Judge under Minn. Rules part 1400.6350 at the outset of the hearing on December 18, 2006.

13. The Respondents did not file any Notice of Appearance with the Administrative Law Judge or contact the Administrative Law Judge to request a continuance prior to the December 18, 2006, hearing date. The Respondents did not personally appear at the hearing scheduled for December 18, 2006, or have an appearance made on their behalf.

14. The allegations set forth in the Order for Hearing and Notice Thereof issued in these matters, having been deemed proved and taken as true, are hereby incorporated into these Findings by reference.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

⁷ Ex. 3-J.

⁸ Testimony of R. Krueger.

⁹ See each Order for Hearing and Notice Thereof at 2.

¹⁰ *Id.* at 1.

¹¹ Ex. 1-J.

CONCLUSIONS

1. The Minnesota Racing Commission and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 240.08, subd. 5, and 14.50.

2. The Respondents were given timely and proper notice of the hearing in these matters.

3. The Minnesota Racing Commission has complied with all relevant procedural requirements of statute and rule.

4. Under Minn. Stat. § 240.03(9), the Minnesota Racing Commission has the power to "take all necessary steps to ensure the integrity of racing in Minnesota."

5. Under Minn. Stat. § 240.08, subd. 2, an application for a Class C license must be accompanied by an affidavit that the applicant "does not have a felony conviction of record in a state or federal court and does not have a state or federal felony charge pending." The Commission may issue a Class C license if it determines that the applicant is qualified for the occupation for which licensure is sought and "will not adversely affect the public health, welfare, and safety or the integrity of racing in Minnesota." Under Minn. Stat. § 240.08, subd. 5, the Minnesota Racing Commission "may revoke a class C license for a violation of law or rule which in the commission's opinion adversely affects the integrity of horse racing in Minnesota"

6. Minnesota Rules part 7877.0100, subp. 2, specifies that, before issuing a Class C license, the Commission will "first determine that the applicant's age, experience, reputation, competence, record of law abidance, and financial responsibility are consistent with the best interests of horse racing, the provisions of Minnesota Statutes, chapter 240, and that licensure will not adversely affect the public health, welfare, and safety within Minnesota."

7. Minnesota Rules part 7877.0155 (H) states that acceptance of a Class C license means that the licensee "consents and agrees . . . [to] conduct himself or herself in a manner that is not detrimental to the best interests of racing."

8. Under Minnesota Rules part 1400.6000, the Respondents are in default as a result of their failure to appear at the scheduled hearing.

9. Under Minnesota Rules part 1400.6000, when a party defaults, the allegations and the issues set out in the Order for Hearing and Notice Thereof may be taken as true and deemed proved. The Administrative Law Judge therefore takes those allegations and issues as true and deemed proved.

10. Based upon the facts set out in each Order for Hearing and Notice Thereof, the Respondents have violated Minn. Stat. §§240.08 and Minnesota Rules parts

7877.0100, subp. 2, and 7877.0155 (H), and are subject to disciplinary action by the Minnesota Racing Commission.

11. An order by the Commission prescribing disciplinary action against the Respondents is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED: that appropriate disciplinary action be taken against the Class C licenses held by Chris E. Zimmerman and Joseph T. Jaspersen.

Dated: January 5, 2007

s/Barbara L. Neilson

BARBARA L. NEILSON

Administrative Law Judge

Reported: Tape Recorded (one tape).

NOTICE

This Report is a recommendation, not a final decision. The Minnesota Racing Commission will make the final decision after a review of the record. The Commission may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commission shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commission. Parties should contact the Office of the Executive Director of the Minnesota Racing Commission, 1100 Canterbury Road, P.O. Box 630, Shakopee, MN 55379 (telephone: (952) 496-7950), to find out about the procedure for filing exceptions or presenting argument.

If the Commission fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commission must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commission, or upon the expiration of the deadline for doing so. The Commission must notify the parties and the Administrative Law Judge of the date on which the record closes.

Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail or as otherwise provided by law.